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WAYCO GROUP, INC.

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

OAKLEY, INC.,

Plaintiff,

vs.

WEYCO GROUP, INC., a Wisconsin  
Corporation, dba NUNN BUSH,

Defendant.

CASE NO. 08CV00480-L-RBB

**ANSWER TO COMPLAINT FILED  
BY OAKLEY, INC.; REQUEST FOR  
JURY TRIAL**

Defendant Weyco Group, Inc. ("Weyco") answers the complaint of Plaintiff  
Oakley, Inc. ("Oakley") as follows:

**JURISDICTION AND VENUE**

1. Admit.

**THE PARTIES**

2. Admit.

3. Admit.

## FACTUAL BACKGROUND

4. Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies.

5. Weyco admits that U.S. Reg. No. 2,293,046 for OAKLEY is a federally registered mark; Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegation regarding Oakley's ownership of the mark and therefore denies.

6. Weyco admits that U.S. Reg. No. 2,293,046 for OAKLEY is a federally registered mark; Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegation regarding Oakley's non-abandonment of the mark and therefore denies.

7. Deny.

8. Deny.

9. Weyco admits to having received written notice from Oakley as to Oakley's trademark registrations; Weyco denies any implication that it has infringed Oakley's trademark rights.

10. Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies.

11. Weyco is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies.

1 12. Deny.

2 13. Deny.

3 14. Deny.

4 15. Deny.

5  
6 **FIRST CLAIM FOR RELIEF**

7  
8 16. Weyco's answers to the allegations of paragraphs 1-15 are repeated in  
9 response.

10 17. Admit.

11 18. Admit.

12  
13 19. Weyco admits that U.S. Reg. No. 2,293,046 for OAKLEY is a federally  
14 registered mark; Weyco is without knowledge or information sufficient to form a  
15 belief as to the truth of the allegation regarding Oakley's ownership of the mark and  
16 therefore denies.

17  
18 20. Weyco is without knowledge or information sufficient to form a belief  
19 as to the truth of the allegations and therefore denies.

20  
21 21. Deny.

22 22. Deny.

23 23. Deny.

24 24. Deny.

25 25. Deny.

26 26. Deny.

1           27.    Deny.

2           28.    Deny.

3  
4                           **SECOND CLAIM FOR RELIEF**

5           29.    Weyco's answers to the allegations of paragraphs 1-28 are repeated in  
6 response.

7  
8           30.    Admit.

9           31.    Admit.

10          32.    Deny.

11          33.    Deny.

12          34.    Deny.

13  
14                           **AFFIRMATIVE DEFENSES**

15          1.     Defendant's use of the term "Oakley" was not trademark use and  
16 therefore cannot have infringed Plaintiff's trademark rights.

17  
18          2.     Defendant's use of the term "Oakley" ceased months prior to any notice  
19 or demand from Plaintiff.

20  
21          3.     Defendant's use of the term "Oakley" was as a style name subordinate  
22 to one or more famous trademarks of Defendant which appeared prominently on all  
23 packaging for the goods and the goods themselves. The term "Oakley" never  
24 appeared on any goods offered for sale or sold by Defendant.

25  
26          4.     Plaintiff has suffered no damage as a result of Defendant's use of the  
27 term "Oakley" because, among other things, Plaintiff does not sell goods which  
28

1 compete with those which Defendant sold with style name "Oakley".

2 5. Defendant's use of the term "Oakley" was innocent.

3  
4 6. Plaintiff's asserted trademark registration is invalid in that it was  
5 procured through fraud on the United States Patent and Trademark Office.

6 WHEREFORE, Defendant Weyco Group, Inc. demands judgment as follows:

7  
8 A. Dismissing this action with prejudice and on the merits;

9 B. Awarding defendant its costs, disbursements, and expenses incurred in  
10 this action;

11  
12 C. Awarding defendant such other and further relief as this Court deems  
13 proper.

14 Dated: May 9, 2008

15  
16 Respectively submitted,

**DOLL AMIR & ELEY, LLP**

**BOYLE FREDRICKSON, .S.C.**

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21 By: 

22 \_\_\_\_\_  
23 GREGORY L. DOLL  
24 Attorneys for Defendant  
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**DEMAND FOR JURY TRIAL**

Defendant hereby demands trial by jury.

Dated: May 9, 2008

Respectively submitted,

**DOLL AMIR & ELEY, LLP**

**BOYLE FREDRICKSON, .S.C.**

By:



GREGORY L. DOLL

Attorneys for Defendant